

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

OP.No. 26491 of 2001(D)

PETITIONER:

1. K.T. MATHEW, SON OF THOMAS, AGED ABOUT 45 YEARS,
RESIDING IN KATTIVEETIL HOUSE,KOZHOOOR AMSOM DESOM
KANNUR DIST.
2. K.T. JOSEPH, SON OF THOMAS, AGED ABOUT 41 YEARS, DO.DO.
3. ALUMKAL LEELAMA, D/O. MATHEW, DO.DO.

BY ADV. SRI.V.RAJAGOPAL
SRI.K.N.CHATHUKUTTY

RESPONDENTS:

1. DISTRICT COLLECTOR, KANNUR.
2. THE REVENUE DIVISIONAL OFFICER, TELlicherry.
3. THE TAHSILDAR, TELlicherry.

BY G.P. SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 17/12/2007 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 42991 OF 2001 IN OP 26491 OF 2001

DISMISSED

17.12.2007

SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PROCEEDINGS DATED 19.11.98 OF THE 3RD RESPONDENT.

EXT.P2 TRUE COPY OF THE APPELLATE ORDER DATED 2.3.2001 ISSUED BY THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE ORDER DATED 29.5.2001 ISSUED BY THE FIRST RESPONDENT REJECTING THE REVISION PETITION.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 26491 OF 2001

Dated this the 17th day of December, 2007

JUDGMENT

Heard counsel for the petitioner and the Government Pleader. The challenge is against building tax assessment completed vide Ext.P1 and confirmed vide Ext.P2 order in appeal. Even though petitioner has filed revision, the same was dismissed by the District Collector on the ground that there is a delay of 23 days in filing the revision. Ext.P1 is a rectified assessment issued under Section 15 of the Building Tax Act revising the earlier assessment. In fact petitioner has paid the tax originally assessed and revised demand raised pursuant to Ext.P1. However, counsel for the petitioner contended that payment is made under protest and the petitioner is entitled to refund of excess tax paid. The assessment originally completed is reopened in rectification proceedings for the reason that there was an omission to include part of the plinth area representing porch provided for the vehicle. Since petitioner's building is a commercial building, exclusion of car porch is not permissible under Section 5(5) of the Building Tax Act. Therefore

there is no scope for interference with rectification of assessment by including the plinth area of car porch. However, counsel for the petitioner raised a further contention that the revised rate of building tax with effect from 29.7.1996 is not applicable. Tahsildar has stated that the revised rate was applicable because the assessment was completed after introduction of revision. Counsel for the petitioner rightly pointed out that the rate to be applied is the rate prevalent on the date of completion of construction of the building and not the rate prevalent on the date on which assessment was taken up. However, since the date of completion of construction of the building is not decided in the impugned orders I direct the third respondent to reconsider Ext.P1 and give a finding with regard to date of completion of construction of the building and then apply the rate prevalent at that time. If there is reduction in tax on revision, refund should be granted to the petitioner. Third respondent is directed to decide the matter afresh within three months from furnishing proof of date of completion of construction of the building. Petitioner will produce a copy of this judgment before the third respondent for compliance.

(C.N. RAMACHANDRAN NAIR)
Judge

